

**IN THE COURT OF FACULTIES
IN THE MATTER OF
GOPAL KRISHEN GUPTA, A NOTARY
AND IN THE MATTER OF
THE NOTARIES (CONDUCT AND DISCIPLINE) RULES 2015
HEARING: THURSDAY 21st NOVEMBER 2019**

DECISION

BACKGROUND

1. Mr Gupta appeared before the Solicitors Disciplinary Tribunal (“SDT”) between 28th to 31st January 2019. Charges were proved against him which alleged:
 - (a) Between August 2015 and January 2016 he acted where there was a conflict, or a significant risk of conflict arising between his own interests and that of his client and/or between the interests of different clients in respect of an application for collective enfranchisement.
 - (b) On 16th June 2016 he sought improperly to impede an investigation by the Solicitors Regulatory Authority (“SRA”) of a complaint about his conduct by insisting that the proposed collective enfranchisement could not complete unless any complaint about his conduct to the SRA was withdrawn.
2. The Tribunal did not find that he acted dishonestly. It was alleged but never pursued against the Respondent by the Applicant when he gave evidence.
3. They found the Respondent to be wholly culpable for his misconduct and that he had been motivated by a desire to protect his son’s interests. The misconduct in respect of the second charge had been relatively brief in its duration. The Tribunal determined that there should be no interference with his ability to practice. He was fined £45,000 and he was ordered to pay £23,500 in costs.

4. The Nominated Notary was asked by the Court of Faculties to consider whether any action should be taken against the Respondent in the light of the findings of the SDT. He considered that the Respondent's conduct amounted to a breach of Rule 9.2.1 of the Notaries Practice Rules 2014 (as amended July 2017) which reads as follows:-

“A notary conducting a conveyancing transaction in the capacity of a solicitor, or a licensed conveyancer, or member of another professional body with an approved regulator, is subject to the rules and any guidance relating to (a) conflicts of interest and (b) relations with third parties laid down by the approved regulator of that professional body, and should comply with such rules and have regard to any such guidance accordingly.”

5. The conduct alleged was identical to that pursued by the Solicitors Regulatory Authority before the SDT. By virtue of Rule 24.5 of the Notary (Conduct and Discipline) Rules 2015, the written decision of the SDT shall be evidence of the facts stated in that decision. It was unsurprising, therefore, that the Respondent indicated that he accepted the breach of the Notaries Practice Rules 2014 (as amended July 2017) although, as he pointed out, he had never undertaken conveyancing or probate work as a notary. The matter was put before us on the basis of an agreed statement of facts.

THE ALLEGATION

6. As the charge before us relies on the findings of the SDT, set out in the judgment which can be downloaded from their website under the reference 11832-2018 - Gopal Krishen Gupta, we do not intend to descend into the detail of his conduct.
7. It is sufficient to identify that the Respondent was acting for his son, AG, in the purchase of an extension to a leasehold, which was to be extended, on a flat. The Respondent negotiated the lease extension on AG's flat for £45,000. The tenants agreed that AG would buy the shares in the freehold of all non-participating tenants. The Respondent said in correspondence that he had purchased a company for that purpose.

8. The Respondent approached a Surveyors' firm, AM, to act on behalf of the tenants. He valued the premises premium in AG's flat at £66,216 with an additional £10,000 for the roof space. The Respondent queried the valuation and pointed out that the freeholder had been willing to extend it at a price of £45,000 and then reduced to £35-37,000.
9. The Respondent became concerned that his son was going to be unfairly disadvantaged financially as against the position of other tenants. The Respondent told his other clients that the proposed apportionment was unduly unfair to AG and proposed a settlement whereby AG's contribution was reduced by £22,000, or that AG benefit from use of the loft space and the available parking space.
10. At a meeting of the tenants one of his clients accused him of attempting to take advantage of them in favour of his son. The Respondent was told that they would be instructing their own surveyor and lawyers.
11. The SDT found (at ¶¶39.36-39.48) that a conflict existed once the Respondent had received the report from AM. They did not accept that the Respondent, who himself did not provide the report of AM to his clients, assumed that it had been sent to them directly by AM as the email to which the report was attached specifically asked the Respondent to do to all participating leaseholders. The SDT found that the Respondent failed to keep his clients informed and in his dealings with AM promoted the interests of his son, AG, alone whilst acting for all his clients.
12. The SDT accepted that the Respondent had no legal interest in the property, but he had loaned AG money to purchase the property and, to that extent, he had an interest in the property. They found that there was a significant risk of a client conflict on receipt of AM's report and in the Respondent advancing the interests of his son alone in his representations to AM. They found that acting where there was an own interest and client conflict was plainly not in the best

interests of his clients. Those failings fell well below the standard of service to be expected of a solicitor.

13. We do not refer further to the second allegation which does not come within the terms of the charge he faces before us.

FINDING

14. In accordance with the finding of misconduct by the SDT and his admitted misconduct pursuant to Rule 9.2.1 of the Notaries Practice Rules 2014 (as amended July 2017) we find that the Respondent has brought the profession of notaries into disrepute and that as regards his handling of the transactions on behalf of his clients in the matter we have outlined above we concur with the SDT that his moral compass was completely wrong.
15. In reaching its decision, we note that the SDT made no finding of dishonest conduct on his part and that they placed no restriction on his ability to practice as a solicitor.

MITIGATION

16. The Respondent's mitigation was to a large extent set out in the "Statement of Agreed Facts and Issues". We accept that the Respondent qualified as a notary in 1982, was an equity partner of one of the largest legal aid practices in North London before becoming a sole practitioner in 2008. He has never had a complaint made against him or been subject to any disciplinary sanction or any action for negligence. We accept that he is deeply ashamed of his conduct and that that shame is exacerbated by the fact that he comes from a family of lawyers who he feels he has let down.
17. In January 2019 he was appointed a Member of the Order of the British Empire for his services to British business and philanthropy.
18. He has already paid a heavy price for what he has done, with the fines and

costs imposed by the SDT amounting to £68,500 and having to pay his own legal fees of £120,000. He has no intention of renewing his practice certificate as a solicitor but wishes to continue as a notary but will not carry out the reserved activities of conveyancing and probate.

19. We have read references which were provided to the court, all of which speak highly to his qualities both professional and personal.
20. In addition we had the advantage of being addressed by Mr Tim Vaughan on his behalf. In essence his submission was that the Respondent had already been punished by the SDT for his wrong doing and that he ought not to be further penalised.

PENALTY

21. The Court orders that the Respondent be admonished for his misconduct pursuant to Rule 9.2.1 of the Notaries Practice Rules 2014 (as amended July 2017), for his bringing the profession of notaries into disrepute and for his handling of the transactions on behalf of his clients in the manner which suggested that his moral compass was completely wrong.
22. The Court places no restriction on the Respondent's notarial practicing certificate, in accordance with the finding of the SDT that there should be no restriction on the Respondent's ability to practice as a solicitor..
23. The Court orders that this decision be publicized on the website of the Faculty Office for a period of 3 years in accordance with the Court's discretionary powers under Rule 22(5) of the Notaries (Conduct and Discipline) Rules 2015.
24. The Court makes an order as to costs subject to the schedule of costs to be provided by Mr Coutts within 7 days of the date of this hearing and subject to any response of Mr Gupta to be received within 7 days of receipt of the schedule of costs.

His Honour Judge Leonard QC (Commissary)

Richard Saville

Elizabeth McQuay

18th December 2019